

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:

see form PCT/ISA/220

PCT

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.
PCT/US2005/004491

International filing date (day/month/year)
09.02.2005

Priority date (day/month/year)
09.03.2004

International Patent Classification (IPC) or both national classification and IPC
A61B17/00

Applicant
ATRICURE, INC.

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☒ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

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**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/US2005/004491

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 - ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 - ☐ a sequence listing
 - ☐ table(s) related to the sequence listing
 - b. format of material:
 - ☐ in written format
 - ☐ in computer readable form
 - c. time of filing/furnishing:
 - ☐ contained in the international application as filed.
 - ☐ filed together with the international application in computer readable form.
 - ☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
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Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

- ☐ the entire international application,
- ☒ claims Nos. 13-21

because:

- ☒ the said international application, or the said claims Nos. 13-21 relate to the following subject matter which does not require an international preliminary examination (*specify*):

see separate sheet

- ☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):
- ☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
- ☒ no international search report has been established for the whole application or for said claims Nos. 13-21
- ☐ the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:
 - the written form ☐ has not been furnished
 - ☐ does not comply with the standard
 - the computer readable form ☐ has not been furnished
 - ☐ does not comply with the standard
- ☐ the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-*bis* of the Administrative Instructions.
- ☐ See separate sheet for further details

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/US2005/004491

Box No. V Reasoned statement under Rule 43*bis*.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	2,9-12
	No: Claims	1,3-8
Inventive step (IS)	Yes: Claims	
	No: Claims	1-12
Industrial applicability (IA)	Yes: Claims	1-12
	No: Claims	

2. Citations and explanations

see separate sheet

RE Item III

Claims **13-21** relate to subject-matter considered by this Authority to be covered by the provisions of Rule 67.1(iv) PCT. Consequently, no opinion will be formulated with respect to novelty, inventive step and industrial applicability of the subject-matter of these claims (Article 34(4)(a)(I) PCT).

Re Item V

Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

Reference is made to the following documents:

D1: US 5,522,788 A
D2: US 2002/009275 A
D3: US 5,928,138 A
D4: US 6,203,557 A
D5: WO 95 10982 A

1. Independent claim 1

The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claim **1** is not new in the sense of Article 33(2) PCT.

The document **D1** discloses (the references in parentheses applying to this document):

A surgical dissector (blunt dissector device 10, see col. 4, line 15, fig. 1,2), comprising:

- a) an elongate shaft (finger-like dissector portion 16, see col. 4, line 18, fig. 1,2 and non-flexible end section 16a, see col. 5, lines 22,23, fig. 1,2) having a proximal end and a distal end,
- b) a blunt dissection tip (terminating element 16g, see col. 5, lines 24,25, fig. 1,2 and blunt dissector device, see col. 4, line 15) positioned on the distal end of the elongate shaft;
- c) a light source (fiber-optic light element, see col. 6, line 59, fig. 1,2) emitting a visible energy from the blunt tip.

Similar arguments can be made using documents **D3,D4** and **D5**.

2. Dependent claims 2-12

Dependent claims **2-12** do not contain any features which, in combination with the features of any claim to which they refer, meet the requirements of the PCT in respect of novelty and/or inventive step, the reasons being as follows:

2.1. **D1** discloses the features of claims **3-8** (see fig. 1,2)

2.2. The features of claims **2, 11** and **12** have already been employed for the same purpose in a medical device, see document **D2**, par. 0103 and 0106.

It would be obvious to the person skilled in the art, namely when the same result is to be achieved, to apply these features with corresponding effect to a device according to document **D1**, thereby arriving at a device according to claim **2, 11** and **12**.

2.3. These features of claims **9** and **10** define features which come within the scope of the customary practice followed by persons skilled in the art.

Consequently, the subject-matter of claims **9** and **10** also lacks an inventive step.

3. The following deficiencies were found

3.1. The term "sufficient" used in claim **8** and the term "about" used in claims **9** and **10** are vague and unclear and leaves the reader in doubt as to the meaning of the technical features to which they refer, thereby rendering the definition of the subject-matter of said claim unclear, Article 6 PCT.

Due to the lack of clarity of claim **8** also the dependent claims contravene to Article 6 PCT.

3.2. The features of the claims are not provided with reference signs placed in parentheses (Rule 6.2(b) PCT).

3.3. Contrary to the requirements of Rule 5.1(a)(ii) PCT, the relevant background art disclosed in the documents **D1-D5** is not mentioned in the description, nor are these documents identified therein.

3.4. Independent claim **1** is not in the two-part form in accordance with Rule 6.3(b) PCT.